IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6123 OF 2004

Natha Narayan Kshirsagar .. Petitioner

Versus

Maharashtra State Electricity Board & Ors. .. Respondents

Mr.Uday Warunjikar for the petitioner

Mrs.A.R.S.Baxi for respondent no.1 to 3

CORAM: A.P.SHAH & S.U.KAMDAR, JJ

DATED: 20TH SEPTEMBER, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. The present petition raises a dispute as to the birth date of the petitioner herein. According to the petitioner he is born on 4th January 1947. The petitioner while taking employment with the 1st respondent filed an affidavit indicating his birth date as 4th January 1947. Accordingly, in the service record of the petitioner the birth date was entered as 4th January 1947.

2. The petitioner joined the services of the 1st respondent as a Gardener in the year 1977. He was promoted to the post of Assistant Lineman in the year 1995. On 5th February 2003 the respondent no.1 called upon the petitioner to produce the School Leaving Certificate as respondent no.1 found that the birth date given by the petitioner as 4th January 1947 is incorrect. The petitioner did not produce any such birth certificate. However, he filed reply on 24th March 2003 alongwith the affidavit of the mother once again confirming that he was born on 4th January 1947. It seems that the respondent no.1 thereafter carried out inquiry with the school and the school has forwarded the record of the birth date of the petitioner and as per the school record the birth date of the petitioner is 1st June 1943 instead of 4th January 1947. On the basis of the said record the respondent no.1 directed that the petitioner's service should be immediately brought to an end and accordingly the petitioner has been super annuated w.e.f. 8th April 2003. In fact if the birth date of 1st June

1943 is taken as correct then the petitioner would retire on 31st May 2001. Thus, the petitioner was in service from 31st May 2001 to 31st March 2003 even after the actual date of his superannuation thus he was ordered to retire from service. Petitioner's services for the aforesaid period was found to be unauthorised and accordingly by an order dated 3rd June 2004 the recovery has been directed by the respondents of the sum of Rs.2,05,874/-.

3. We have considered the record and heard the parties at some length. We are of the opinion that as per the service record of the petitioner, the petitioner's birth date was shown as 4th January 1947 till the same is corrected as 1st June 1943. These correction has been carried out subsequent to the supposed date of retirement of 31st May 2001. The petitioner has worked during the period 31st May 2001 to 31st March 2003 and has received the salary for the aforesaid period.

4. We are of the view that merely because of the

correction of the birth date subsequent to his superannuation no recovery should be made against the petitioner in respect of the wages which are already paid to him for services rendered. We are of the further opinion that there is no fraud committed by the petitioner that the petitioner should be penalised by effecting such recoveries. Thus, we direct respondent no.1 not to effect any recovery towards the wages paid to the petitioner for the period 31st May 2001 to 31st March 2003. In so far as retirement dues of the petitioner is concerned, the same will be computed on the basis that the petitioner ought to have retired on 31st May 2001. Thus, the petitioner will be entitled to retirement dues on the basis that he has retired on 31st May 2001.

5. In the aforesaid circumstances, we allow the petition partly and set aside the order dated 3rd June 2004 only in so far as it pertains to the recoveries of the wages paid to the petitioner for the period 31st May 2001 to 31st March 2003. We dispose of the petition with the aforesaid

direction. However, there shall be no order as to costs.